



**BOARD OF COUNTY COMMISSIONERS'
(BOCC) CONCURRENCE FORM**

This form must be completed for all staff reports being prepared for BOCC meetings/public hearings and is the cover sheet for the staff report. The original (single-sided) staff report needs to be submitted to the County Manager's Office one (1) week in advance of the scheduled presentation date. For Closed Sessions please submit the original (single-sided) and 8 (double-sided copies) of the staff report.

To: Office of the County Manager

From (Name & Division): John S. Mathias, County Attorney *JSM*

Date: 02/15/12

Phone#: 301-600-1030

E-mail Address: jmathias@frederickcountymd.gov

Staff Report Topic:

(The text provided here will also be reflected on the meeting agenda and county's website.)

Proposed Ordinance regarding English as the Official Language of Frederick County

Requested Meeting Date (mm/dd/yr): 02/21/12

Est. Presentation Time: 5 minutes

Type of Meeting:

(Click to place a check mark in the following appropriate boxes.)

☐ Administrative Business *(The Consent Agenda Committee determines which items are eligible for the consent agenda.)*

☐ Worksession ☐ Closed Session ☐ Public Hearing (a.m. ☐ or p.m. ☒)

☐ BOCC/BOE Mtg. ☐ County/Municipalities Mtg.

☐ Power Point Presentation

Board Action Desired: ☒ Decision ☐ Guidance ☐ Information

Staff Report Review:

This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below :

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(Page 2)</u>
<input type="checkbox"/> Budget Officer	_____	_____	_____
<input type="checkbox"/> Finance Director	_____	_____	_____
<input type="checkbox"/> County Attorney's Office	_____	_____	_____
<input type="checkbox"/> County Manager	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____

Other Reviewing Divisions/Agencies:*(Click to place a check mark in the following appropriate spaces.)*

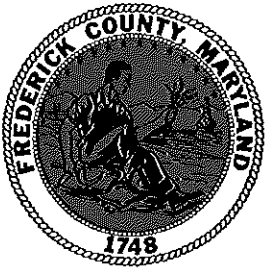
	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <i>(noted below)</i>
<input type="checkbox"/> Animal Control			
<input type="checkbox"/> Citizens Services			
<input type="checkbox"/> Community Development			
<input type="checkbox"/> Emergency Management			
<input type="checkbox"/> Fire & Rescue Services			
<input type="checkbox"/> Health Services			
<input type="checkbox"/> Human Resources			
<input type="checkbox"/> Interagency Information Technologies			
<input type="checkbox"/> Internal Audit			
<input type="checkbox"/> Management Services			
<input type="checkbox"/> Parks & Recreation			
<input type="checkbox"/> Public Works			
<input type="checkbox"/> Transit Services			
<input type="checkbox"/> Utilities & Solid Waste Management			
<input type="checkbox"/> Other: _____			
<input type="checkbox"/> Other: _____			
<input type="checkbox"/> Other: _____			

Elected Officials or Independent Agencies:

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <i>(noted below)</i>
<input type="checkbox"/> Board of Education			
<input type="checkbox"/> Board of Elections			
<input type="checkbox"/> Board of License Commissioners			
<input type="checkbox"/> Citizens Care & Rehabilitation Center			
<input type="checkbox"/> Frederick Community College			
<input type="checkbox"/> Frederick County Public Libraries			
<input type="checkbox"/> Montevue Assisted Living			
<input type="checkbox"/> Sheriff's Office			
<input type="checkbox"/> Social Services			
<input type="checkbox"/> State's Attorney's Office			

Comments:

1. <u>From:</u> _____	<u>Date:</u> _____
2. <u>From:</u> _____	<u>Date:</u> _____
3. <u>From:</u> _____	<u>Date:</u> _____
4. <u>From:</u> _____	<u>Date:</u> _____
5. <u>From:</u> _____	<u>Date:</u> _____



OFFICE OF THE COUNTY ATTORNEY FREDERICK COUNTY, MARYLAND

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MEMORANDUM

TO: Board of County Commissioners

FROM: John S. Mathias, County Attorney *JM*

DATE: February 15, 2012

RE: English as Official Language

COUNTY ATTORNEY

John S. Mathias

ISSUE

Should the County Commissioners adopt the attached draft ordinance to authorize English as the Official Language?

SENIOR ASSISTANT COUNTY ATTORNEYS

Michael J. Chomel
Linda B. Thall

BACKGROUND

The BOCC proclaimed "English as the Official, Primary and Common Language" of Frederick County by adopting Resolution 08-13, effective April 24, 2008 (Attachment 1). In this simple, one page Resolution, the BOCC "proclaims that the English language is the official, primary and common language of Frederick County Government." Res. 08-13.

The BOCC has directed the County Attorney's Office to review the legal ramifications of this existing Resolution.

This official proclamation could be more fully emphasized by re-adopting it as an Ordinance rather than a Resolution.

The difference between these 2 types of BOCC action is that a Resolution is a less formal or solemn action and ordinarily an expression of opinion or a ministerial matter. A Resolution usually does not require notice and a public hearing. An Ordinance, on the other hand, is a distinctly

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legislative act prescribing a more permanent rule that continues in force until repealed. An Ordinance usually requires prior public notice and a public hearing. *E.g., Inlet Associates v. Assateague House Condominium Association*, 313 Md. 413, 427-429 (1988).

If the BOCC desires this English language rule to be a more formal, solemn action stating a continuing requirement, then the BOCC should adopt an Official Language Ordinance, rather than a Resolution.

In reviewing similar legislation from other jurisdictions, a Model Municipal English Language Ordinance was located. This model ordinance was on the website for ProEnglish. This organization describes itself as "the nation's leading advocate of official English." (www.proenglish.org/about-us/mission). According to the ProEnglish website, 31 states have official English laws while 19 do not. (Maryland does not.)

This model ordinance for municipalities developed by ProEnglish addresses many of the pertinent issues including:

- a. English is declared as the official language,
- b. all official actions must be in English,
- c. several exceptions allow for the use of a language other than English including:
 - i. to teach another language or to teach English to those not fluent in English,
 - ii. to protect public health and welfare,
 - iii. to comply with state or federal law,
 - iv. to protect rights in criminal matters, and
 - v. to collect money owed to the County.

A draft ordinance for Frederick County, very similar to this model ordinance, has been prepared (Attachment 2). Other than stylistic changes, this draft ordinance is substantially the same as the model ordinance. Two

sections not in the model ordinance are included for the BOCC's consideration.

Section 6 specifies that adoption of this Ordinance is not intended to create any new legal proceeding in court. The BOCC, and not the court, should be responsible for the enforcement of this Official Language Ordinance because it applies only to actions of County government. If anyone is dissatisfied with the use of English language in County Government, the remedy should be to contact the BOCC and not to resort to the Courts.

Section 7 acknowledges that this Ordinance would replace the existing English Language Resolution (No. 08-13) and therefore this Resolution is repealed.

RECOMMENDATION

The County Commissioners should decide whether they desire to adopt the attached draft ordinance authorizing English as the Official Language for Frederick County.

JSM/cb

Attachment

cc: David B. Dunn, County Manager

THE EFFECTIVE DATE OF THIS ORDINANCE IS _____

ORDINANCE NO. _____

RE: Frederick County Official English Ordinance

The English language is the common language of Frederick County, Maryland and of the United States;

The use of a common language removes barriers of misunderstanding and helps to unify the people of Frederick County, this State and the United States, and helps to enable the full economic and civic participation of all its citizens, regardless of national origin, creed, race or other characteristics, and thus a compelling governmental interest exists in promoting, preserving, and strengthening the use of the English language;

Proficiency in the English language, as well as in languages other than the English language, benefits Frederick County both economically and culturally and should be encouraged;

In addition to any other ways to promote proficiency in the English language, the Board of County Commissioners of Frederick County, Maryland (BOCC) can promote proficiency in English by using the English language in its official actions and activities;

In today's society, Frederick County may also need to protect and preserve the rights of those who speak only the English language to use or obtain governmental programs and benefits; and

The BOCC can reduce costs and promote efficiency, in its roles as employer and a government accountable to the people, by using the English language in its official actions and activities.

The BOCC held a duly advertised public hearing on this proposed Ordinance on February 21, 2012. The public had an opportunity to comment at this public hearing.

Section 1. Official English Declaration

A. The English language is the official language of Frederick County.

B. The BOCC and officials of Frederick County shall take all steps necessary to ensure that the role of English as the common language of Frederick County is preserved and enhanced.

C. The BOCC shall make no Ordinance which diminishes or ignores the role of English as the common language of Frederick County.

D. Official actions of Frederick County which bind or commit Frederick County or which give the appearance of presenting the official views or position of Frederick County shall be taken in the English language, and in no other language. Unofficial or non-binding translations or explanations of official actions may be provided separately in languages other than English, if they are appropriately labelled as such and reference is made to a method to obtain the official action; unless otherwise required by federal or state law, no person has a right to such an unofficial or non-binding translation or explanation, and no liability or commitment of Frederick County shall be based on such a translation or explanation.

E. No ordinance, decree, program, or policy of Frederick County shall require the use of any language other than English for any documents, regulations, orders, transactions, proceedings, meetings, programs, or publications, except as provided in Section 2.

F. A person who speaks only the English language shall be eligible to participate in all programs, benefits and opportunities, including employment, provided by Frederick County (providing all other eligibility requirements are satisfied), except when required to speak another language as provided in Section 2.

G. No law, ordinance, decree, program, or policy of Frederick County shall penalize or impair the rights, obligations or opportunities available to any person solely because a person speaks only the English language.

Section 2. Exceptions

Frederick County may use a language other than English for any of the following purposes, whether or not the use would be considered part of an official action:

- A. To teach or encourage the learning of languages other than English;
- B. To protect the public health, sanitation, and public safety;
- C. To teach English to those who are not fluent in the language;
- D. To comply with the Native American Languages Act, the Individuals with Disabilities Education Act, the Voting Rights Act, or any other federal or state law;
- E. To protect the rights of criminal defendants and victims of crime;
- F. To promote trade, commerce, and tourism;
- G. To collect payments, fines, or other financial obligations due and payable to Frederick County;
- H. To create or promote mottos or designations, inscribe public monuments, and perform other acts involving the customary use of a language other than English;

I. To utilize terms of art or terms or phrases from other languages which are commonly used in communications otherwise in English; and

J. Printed materials, signage, or other materials or documents of Frederick County printed in languages other than English at the time of the adoption of this resolution and not otherwise excepted in this Section 2 shall not be discarded or reprinted solely in English at the addition cost or expense of the taxpayers of Frederick County until they are exhausted or become otherwise obsolete.

Section 3. Official Functions

Notwithstanding any other state law and except as provided in section 2 of this Ordinance, nothing in this Ordinance shall be construed to prohibit any elected official, officer, agent, employee of the state or a political subdivision, while performing official functions, from communicating unofficially through any medium with another person in a language other than English (as long as official functions are performed in English).

Section 4. Private Use Protected

The declaration and use of English as the official language of Frederick County should not be construed as infringing upon the rights of any person to use a language other than English in private communications or actions, including the right of government officials (including elected officials) to communicate with others while not performing official actions of Frederick County.

Section 5. Federal and State Preemption

Nothing in this Ordinance shall be interpreted as conflicting with the laws of the United States, or of the laws of the State of Maryland.

Section 6. No Cause of Action Created

This Ordinance is not intended to create any cause of action or authorize any legal proceedings to enforce or interpret this Ordinance.

Section 7. Repeal of Prior Resolution.

This Ordinance replaces and supersedes Resolution No. 08-13 "Proclaiming English as the Official, Primary and Common Language" and therefore Resolution No. 08-13 is hereby repealed.

Section 8. Effective Date.

This Ordinance shall take effect on _____, 2012.

The undersigned hereby certifies that this Ordinance was approved and adopted on the ____ day of _____, 2012.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

David B. Dunn
County Manager

Blaine R. Young, President